

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, D. C. 20554**

In the Matter of

Lockheed Martin Corporation COMSAT  
Corporation, and COMSAT Digital  
Teleport, Inc. Assignor,

And

Intelsat, Ltd., Intelsat (Bermuda), Ltd.,  
Intelsat LLC, and Intelsat USA License Corp.  
Assignee

Applications for Assignment of Sections 214  
Authorizations and Earth Station Licenses and  
Declaratory Ruling Requests

}  
}  
}  
}  
}  
}  
}  
}  
}  
}  
}

IB DOCKET NO. 02-87

**REPLY TO LOCKHEED OPPOSITION TO MOTION TO STRIKE**

Litigation Recovery Trust (“LRT”) hereby submits this Reply to a letter dated July 29,2002 (Lockheed Letter) by a lawyer purportedly in the employ of Lockheed Martin Global Telecommunications (“LMGT”).<sup>1</sup> The letter offers several arguments in response to LRT’s recently filed Motion to Strike. LRT submits this Reply to Lockheed’s Opposition.

**1. Lockheed Letter Constitutes Admission Against Interest,  
Proving Lockheed’s Violation of Ex Parte Rules**

Lockheed’s letter, while masquerading as an opposition against LRT’s filing , is in actuality an admission against interest on the part of Lockheed/Comsat, as it confirms a pattern of the companies’ violations of the ex parte rules.

---

<sup>1</sup> As stated in the Motion to Strike, it is LRT’s understanding, based on press releases of Lockheed Masrtin Corporation (“Lockheed”) and recent filings of Lockheed, that LMGT ceased as an operating entity as of December 31, 2001. has been dissolved.

In the second paragraph of the letter, counsel attempts to offer an explanation of Lockheed/Comsat's supposed good faith compliance with the service rules. Counsel states as follows:

In fact, [Lockheed's] letter was mailed on June 27 [2002] to LRT at the address used throughout this proceeding: 515 Madison Avenue, New York, NY 1022. Several days later, the letter was returned to Comsat bearing a typed sticker reading "WRONG ADDRESS RETURN TO SENDER." See attachment hereto. While Comsat does not know the origin of that sticker, it does not appear to have been affixed by the Post Office. LMGT Letter, ¶ 2.

To say the least, LRT finds counsel's narrative to be incredible. LRT and the Commission are expected to believe that some unknown person at some unknown location in some unknown city is carefully reproducing labels to cover addresses on letters, and miraculously returning the errant envelopes to Comsat without a return Post Office cancellation stamp. This certainly constitutes an immaculate reception. Further, the envelope in question bears a June 27 postage meter stamp (one would assume originating from the Lockheed/Comsat mailroom), but there is no cancellation stamp from the US Post Office.<sup>2</sup>

However, even accepting counsel's explanation as plausible, the fact remains that the letter, once supposedly returned to Comsat/Lockheed in Bethesda, was filed away in some location until it was copied and submitted as an Exhibit in this proceeding. Such conduct on the part of Lockheed and its counsel is unacceptable, and a clear violation of the service rules. Further, as established by evidence heretofore submitted in this proceeding, the sharp practice of Lockheed is not the first violation of the ex parte rules, to which LRT has been subjected.

As recounted in the Motion to Strike, in the Lockheed-Comsat Merger Proceeding,<sup>3</sup> Lockheed/Comsat, represented by the same staff attorney who submitted the LMGT Letter herein, offered similar "returned envelope" scenario in an attempt to explain away their failure to serve LRT with certain pleadings.

In both incidents, one is presented with testimony by counsel that he supposedly mailed pleadings to LRT, found them returned by the Post Office, and then filed the returned documents until it became necessary to offer the envelopes to respond to allegations of

---

<sup>2</sup> Admittedly not all metered mail is canceled by the Post Office. However, to have the Comsat envelope pass through the system from Bethesda to New York and return without bearing any marking from the Post Office must be regarded as quite unusual.

<sup>3</sup> Lockheed-Comsat Merger, FCC File Nos. SAT-T/C-20000323-00078, et al.

participating in ex parte communications. In each case, counsel decided to turn what is described as a supposed ministerial error ( caused by the Post Office in one case and an unknown power in the instant situation) into a tactical ex parte advantage for Lockheed/Comsat. Counsel sought to carry out these ex parte communications until the facts were discovered by LRT. Then to disguise the situation, the failure of the Post Office or the interference by some unknown third party is offered as Lockheed's cover or excuse. And in each case, to this day, Lockheed/Comsat have failed to supply LRT with a copy of Lockheed's ex parte communications.

Such conduct on the part of Comsat/Lockheed is totally unacceptable and a clear violation of the Commission's rules. The companies' obligation, once the pleadings in question were returned to Bethesda, was to re-address and re-send them to LRT in New York. Their counsel knew at the time and knows today the specific address where LRT maintains its offices. Accordingly, Comsat/Lockheed were required to send the pleading back to New York to LRT's attention. If counsel truly sought to carry out this second service in good faith, he would have used some public or private carrier service, offering a signature on receipt procedure such as registered mail or private courier service, to assure that the documents were in fact received by LRT.<sup>4</sup>

Comsat/Lockheed would apparently have none of this. The returned envelopes were immediately filed away. They were not seen until the time when LRT filed an ex parte complaint. Once LRT's complaints were filed, counsel used the returned envelopes to defend Comsat/Lockheed's past actions, creating the "good faith mistake" ruse.

Certainly there can be no defense for such sharp practice and outright rule violations by Lockheed/Comsat. Clearly, the Commission cannot condone actions on the part of licensees

---

<sup>4</sup> LRT observes that when Lockheed counsel responded by sending the Lockheed Letter, he forwarded it to LRT's long standing Madison Avenue address via US Post Office registered mail. He also sent a second letter via the same means the next day to make all parties to this proceeding aware that he had utilized the registered mail device. Also, in the second letter, he stated that he had had trouble in accessing the current LRT fax number (212-754-2110). Contrary to counsel's statement, the LRT fax number is fully functional, receiving faxes on a daily basis. The machine also has a back-up memory device to accommodate certain situations such as power disruptions. The second letter, while clearly a superfluous, he "doth protest too much, methinks" device (Hamlet (III, ii, 239), does establish counsel's knowledge of alternate means (registered mail, fax) available to him to properly serve pleadings on LRT. His failure to resort to these and other alternative facilities, including express mail services, in the past

and their counsel practicing before it, who would regularly take advantage of a mail delivery failure to carry out an ex parte communication.

As noted, Comsat/Lockheed have now been found by LRT in violation of the ex parte rules on two occasions in two separate proceedings. This history constitutes clear evidence of a company and its counsel operating above and beyond the law, playing “fast and loose” with the rules. Counsel was obliged in these instances to re-send the Lockheed/Comsat filings to LRT. Rather, counsel chose on two separate occasions to take advantage of postal carrier failures. These intentional ex parte communications of Comsat/Lockheed were deliberate and in bad faith, carried out by setting up an elaborate scheme to deflect attention away from these obvious abuses and rule violations.

The Commission must properly uphold the principles of good faith, fairness and equal treatment as it administers its rules and regulations. The Commission requires that the ex parte rules be strictly observed by all parties participating in its proceedings. For a party to serve a pleading, have it returned, and then, with full knowledge of the recipient’s address, to fail to re-send the filing, constitutes a direct violation of the rules. And, where a party has been found to have taken advantage of a mail failure and to have carried out the same ex parte violation in two separate proceedings, the Commission must severely sanction the licensees for this illegal pattern of conduct..

Here, as LRT has noted in the past, we are presented with the actions of two unique companies, one – Comsat- a US government sponsored enterprise, and the second- Lockheed- the country’s largest defense contractor. In both cases, these companies, given their status, should be expected and required to observe the highest legal and ethical standards. In the case before us, there has been an admitted, deliberate and repeated violation of these basic standards. Indeed, the companies’ counsel has tried what may be commonly referred to as a “fast one,” submitting ex parte communications in order to gain an unfair advantage over LRT.

Such conduct is purely and simply wrong. It is also illegal. The Commission cannot be a party to such sharp practices and rule violations.

---

must be seen as direct evidence of counsel's bad faith in seeking to take advantage of postal or other failures to deliver past filings to LRT.

Comsat/Lockheed must be sanctioned for their conduct in this proceeding. All of their pleadings should be stricken and the matter referred to the Enforcement Bureau. Furthermore, the attorney in question should be sanctioned. He should also be suspended from practicing before the Commission for an extended period of time, at least 18 months.

Finally, in view of the fact that this latest conduct is not isolated, but is part of a continuing and extensive pattern of rule violations, the Commission should adopt broad sanctions as addressed below.

## 2. Questions Concerning LRT Communications and Service of Documents

In its Opposition, Lockheed raises several questions concerning LRT's email communications and service of documents in this proceeding. Lockheed states that it was not properly served with copies of the Motion to Strike. It adds a further accusation concerning emails sent to Lockheed's counsel.

As reflected in the attached Exhibit A of email transmissions by LRT, all such letters and the Motion to Strike were forwarded to one or more attorneys at the firm of Wiley Rein & Fielding, outside counsel representing Comsat, Lockheed and Intelsat. None of the email transmissions was rejected and returned to LRT, and therefore, all are presumed to have reached the intended recipients. To remove any doubt concerning the service of the Motion to Strike, upon receipt of the Lockheed Letter, LRT sent a second copy of the filing via email to all persons on the service list.

LRT is at a loss to determine why Lockheed's house counsel would not have been able to ascertain from the company's outside attorneys that they had received the email transmissions in question. This is just one more enigma created by counsel. All LRT emails were all properly addressed and were served upon the parties to the proceeding.

## 3. Lockheed/Comsat's Misrepresentation Violations

Comsat/Lockheed conclude their Opposition by stating as follows:

In sum, Comsat made timely, good faith efforts to serve its June 27 letter on LRT. Accordingly, there is no basis for LRT's claim that Comsat (and in particular the undersigned attorney) violated the Commission's ex parte rules. Lockheed Letter, ¶4

Based on the information set forth in the Lockheed Letter and sworn exhibits to earlier submissions in the Lockheed-Comsat Merger Proceeding, it can be established that Comsat/Lockheed did most certainly not seek to comply with the Commission's rules in good faith. Rather, the companies sought to take full and unfair advantage of the failures of mail carriers to submit ex parte communications to the Commission. These facts constituting bad faith violations of Commission rules are established by the companies own submissions.

The Commission certainly cannot tolerate such conduct on the part of its licensees. To compound matters, Comsat/Lockheed have misrepresented information to the Commission. They did not act in good faith. Indeed, they acted in bad faith, seeking to take advantage of a communications failure to submit unauthorized, ex parte pleadings to the Commission. Their objective was clear, to gain an unfair advantage over LRT. To depict their actions as good faith compliance with the Commission's rules constitutes blatant misrepresentation.

#### 4. Lockheed/Comsat Have Blatantly Violated the Ex Parte Rules

In establishing the ex parte rules<sup>5</sup>, the Commission has sought to enhance the ability of the public to communicate with the Commission in a manner that comports with fundamental fairness. Report and Order in GC Docket No. 95-21, 12 FCC Rcd 7348 (1997). Furthermore, the Commission has observed that the ex parte rules are an important element of the regulatory process, and, accordingly, that full compliance is expected. See generally *Press Broadcasting Co. v. FCC*, 59 F.3d 1365 (D.C. Cir. 1995).

Clearly, Comsat/Lockheed's failure to serve LRT with copies of the its responsive filings n this and other proceedings, violated the Commission's ex parte rules, which

---

<sup>5</sup> The Commission in general prohibits "ex parte presentations" during the pendency of an administrative adjudication and any subsequent judicial review. 47 C.F.R. s 1.1208. The regulations define a "presentation" as a "communication directed to the merits or outcome of a proceeding." Id. at s 1.1202(a). A written presentation is "ex parte" if it is "not served on the parties to the proceeding." Id. at s 1.1202(b). Thus, a written presentation comes within the prohibition of the rules only if it is both "directed to the merits or outcome of a proceeding" and "not served on the parties."

prohibit presentation of information to the Commission without providing notice to other parties in a restricted proceeding. See 47 C.F.R. 1.1202(b)(1) and 1.1204(b)(1).

The violations should be deemed aggravated by the circumstances that Comsat/Lockheed counsel knew about the prohibitions in the ex parte rules, and that the violations were multiple and repeated.

When reviewing allegations of *ex parte* contacts, the Commission is required to determine the factors involved in the contact, and determine whether the contact resulted in unfair treatment of one or more parties. See *Press Broad.*, 59 F.3d at 1369. Several factors are regularly used in undertaking the analysis, including:

the gravity of the ex parte communications; whether the contacts could influence the agency's ultimate decision; whether the party making the improper contacts benefited from the agency's ultimate decision; whether the contents of the communications were unknown to opposing parties, who therefore had no opportunity to respond; and whether vacation of the agency's decision and remand for new proceedings would serve a useful purpose. *Professional Air Traffic Controllers Org. v. Federal Labor Relations Auth.*, 685 F.2d 547, 565 (D.C. Cir. 1982).

Here, it certainly cannot be concluded that Comsat/Lockheed counsel sincerely believed that he had complied with the ex parte rules. Counsel sent the subject pleading to LRT in New York, and when it was returned by the post office, it was filed away, rather than being resent to LRT's long standing Madison Avenue address. The record must be found to establish that there can be no "plausible argument" advanced in support of that the position that counsel could have believed he was properly complying with the rules. Therefore, under these circumstances, it should be concluded that stringent sanctions should be imposed." See *In re Rainbow Broadcasting Co.*, 9 F.C.C.R. 2839, 2843 (1994)

5. Comsat/Lockheed's Attempt to Conceal Ex Parte Violations Constituted Misrepresentation and Lack of Candor

Comsat/Lockheed clearly have not been candid with the Commission in responding to LRT's ex parte complaints. Their repeated lack of candor, in this and other proceedings, should result in the imposition of significant sanctions, including license disqualification. Given the position taken by Comsat/Lockheed counsel who has fully admitted failing to serve LRT with pleadings which were incorrectly returned by the Post Office, the Commission must conclude that the companies sought to mislead the Commission about their failure to comply with the ex parte rules.

The Commission maintains a longstanding policy for administering character qualification issues raised with respect to license applications. Violations of the Communications Act, the Communications Satellite Act or the Commission's rules and regulations can be found to raise character concerns with respect to broadcast and non broadcast license applications, including providing the basis for disqualification of an applicant. See *Virginia RSA 6 Cellular Ltd. Partnership*, 6 FCC Rcd 405, 407 (1991) (citing *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 Commission 2d 1179, 1210 ("Policy Statement") (subsequent history omitted)). Further, a finding that Comsat and Lockheed are not qualified to continue as a licensee or should be made subject to sanctions can likely terminate or severely limit their right to assign or transfer licenses to a third party as is sought in the present proceeding.

For the past six years, Comsat and Lockheed have been engaged in a continuing pattern of behavior involving the presentation of false and fraudulent information to the Commission as part of their efforts to discredit LRT and its members, and to seek the dismissal of its various petitions and other pleadings. The ex parte violation and misrepresentation addressed herein is but further evidence of this pattern of conduct.

The Commission has observed that fraud and misrepresentation "is a subject area the Commission has traditionally considered to be pertinent to its evaluation of a licensee's character." *Decision*, 13 F.C.C.R. at 15,038. Commission regulations specifically forbid applicants from "mak[ing] any misrepresentation or willful material omission bearing on any matter..." 47 C.F.R. § 1.17; see also 47 U.S.C. § 312(a)(1). The Commission has found that a licensee's complete candor is important because "effective regulation is premised upon the agency's ability to depend upon the representations made to it by its licensees." *Leflore Broad.*

*Co. v. Commission*, 636 F.2d 454, 461 (D.C. Cir. 1980); see also *Character Policy*, 5 F.C.C.R. at 3253.

It is well recognized that the Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency. See *Swan Creek Communications, Inc. v. Commission*, 39 F.3d 1217, 1221-24 (D.C. Cir. 1994); *Garden State Broad. Ltd. v. Commission*, 996 F.2d 386, 393-94 (D.C. Cir. 1993).

As shown above, and supported by the evidence submitted herein, Lockheed, and Comsat, have exhibited a continuing pattern of conduct involving the submission of false and fraudulent information and the affirmative failure to disclose information directly related to ex parte violations and other rule violations.

The evidence submitted herein shows that Lockheed and Comsat have systematically followed a course of action involving the deliberate failure to provide LRT with service copies of pleadings and to misrepresent material facts concerning these violations. These actions by Lockheed and Comsat have involved direct and continuing violations of the Commission's rules and regulations, including, in particular, 47 CFR § 1.65.

It is observed that the Commission has recognized that prior misconduct can have a material bearing on qualifications for non-broadcast, as well as broadcast licensees, and it has assessed the relevance of such matters in non-broadcast license cases consistently based on the principles set forth in the Broadcast Character Policy Statement. see *MCI Telecommunications Corporation For Authority to Construct, Launch and) File No. 73-SAT-P/L-96 Operate a Direct Broadcasting Satellite System at 110 W.L. Memorandum Opinion and Order*, released: May 19, 1999 ("MCI Order").

This latest evidence of ex parte violations must be seen as part of a continuing pattern of deception, which LRT has in the past cited against Comsat and Lockheed. In this proceeding and other current proceedings referenced above, LRT has sought to show that both Comsat and Lockheed have failed to properly disclose information to the Commission central to their obligations as licensees<sup>6</sup>.

---

<sup>6</sup> . the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill

Furthermore, the ex parte actions of Comsat/Lockheed were repeated, deliberate and willful.<sup>7</sup> The actions of Comsat/Lockheed in failing to serve pleadings in this and other proceedings and their efforts to conceal this conduct clearly involve conscious and deliberate acts and, therefore, "willfulness." The Commission cannot tolerate such a pattern of conduct<sup>8</sup> by Comsat/Lockheed designed to use failures on the part of the Postal Service to the disadvantage of LRT<sup>9</sup>. To attempt to disguise these actions is deception and misrepresentation<sup>10</sup>. Such actions on the part of Comsat/Lockheed are extremely serious<sup>11</sup> and cannot be explained away as the result of misunderstanding and/or erroneous or mistaken advice by counsel or otherwise<sup>12</sup>.

In seeking to conceal their ex parte violations, Comsat/Lockheed have intentionally sought to deceive the Commission. They have falsely represented that they

---

its statutory mandate. This duty of candor is basic and well known. RKO General, Inc. v. FCC, 670 F.2d 215, 232 (D.C. Cir. 1981).

<sup>7</sup> The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act, or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States. 47 U.S.C. § 312(f)(1).

<sup>8</sup> The evidence referenced in the Motion to Strike and the Lockheed Letter confirm a deliberate pattern. See Ismail v. Cohen, 706 F. Supp. 243, 252-53 (S.D.N.Y. 1989); Fed. R. Evid. 404(b).<sup>8</sup>

<sup>9</sup> "If the Commission cannot believe and rely on what applicants and licensees tell it, it cannot maintain the integrity of its processes," Standard Broadcasting, Inc., 7 FCC Rcd 8571, 8573 (Rev. Bd. 1992), because of the Commission's exceedingly limited budget and staff compared with the enormous industries and thousands of licensees under its purview. Id. at 8573 n. 7.

<sup>10</sup> As a licensing authority, the Commission is not expected to "play procedural games with those who come before it in order to ascertain the truth" . . . and license applicants may not indulge in common-law pleading strategies of their own devise. Id. at 229.

<sup>11</sup> Deliberate failures to produce information can result in disqualification for lack of candor." Garden State Broadcasting Limited Partnership v. FCC, 996 F.2d 386, 393 (D.C. Cir. 1993). (Emphasis in the original.)

<sup>12</sup> Advice of counsel does not excuse a clear breach of duty by a licensee. See RKO General, Inc. v. FCC, 670 F.2d at 231.<sup>12</sup> Since house counsel was involved in these actions, Comsat/Lockheed must take full responsibility for the actions of their employee.

are in compliance with the ex parte rules. This constitutes deliberate and repeated misrepresentation.<sup>13</sup>

Intent to deceive is found from the false statement of fact coupled with proof that Comsat/Lockheed had knowledge of its falsity. See *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991). Intent may also be inferred from motive, in this case to avoid the allegations put forth by LRT and obtain favorable rulings from the Commission. See *Joseph Bahr*, 10 FCC Rcd 32, 33 (Rev. Bd. 1994).

Lack of candor involves concealment, evasion or some other failure to be fully informative, carried out with an intent to deceive. See *Fox River*, 93 FCC 2d at 129. The duty of candor requires an applicant before the FCC to be "fully forthcoming as to all facts and information relevant" to its applications or filings. *Swan Creek*, 39 F.3d at 1222. Relevant information is defined as information that may be of "decisional significance." *RKO General Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981), cert denied, 456 U.S. 927 and 457 U.S. 1119 (1982).

Here, Comsat/Lockheed clearly intended to evade the issue of violation of the ex parte rules, just as they had in the Comsat-Lockheed Merger proceeding. This conduct reflects a propensity to deal dishonestly with the Commission<sup>14</sup>. Moreover, it is now well-established that a licensee's "proclivity to deal truthfully with the Commission is a bedrock prerequisite to a finding of basic character qualification to hold a license." *KQED, Inc.*, 3 FCC Rcd at 2826 \_\_ 24; see also *Trustees of the University of Pennsylvania*, 69 FCC 2d 1394, 1399, 1429-30 (1978), As the Commission is well aware by now, Comsat/Lockheed have time and again failed this vital proclivity test.

---

<sup>13</sup> Misrepresentation is a false statement of fact made with an intent to deceive the Commission. *Fox River Broadcasting, Inc.*, 93 FCC 2d at 129. Intent to deceive is a "necessary and essential element" of misrepresentation. *Trinity Broadcasting of Florida, Inc.*, 10 FCC Rcd 12020, 12063 (1995); see *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217 (D.C. Cir. 1994).

<sup>14</sup> In its Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1231-32 (1989), the Commission indicated that the fundamental purpose of the character inquiry about an applicant's qualifications is "to make a predictive judgment relating to the applicant's propensity to deal honestly with the Commission and to comply with [its] rules and policies." See *California Public Broadcasting Forum v. FCC*, 752 F.2d 670 (D.C. Cir. 1985); *KQED, Inc.*, 3 FCC Rcd 2821, 2826-27 at \_\_ 24-25 (Rev. Bd. 1988) (denial of non-commercial license renewal for misrepresentations) (subsequent history omitted).

History has shown, these companies to take every advantage, cut every corner, shade every statement and, when all else fails, employ fraud and deception to achieve their objectives.

On the subject of truthfulness required of licensees, the Commission has observed as follows:

Complete candor from Commission licensees as to matters under investigation may be demanded and is expected. ... While issues are designated to place the licensee on notice of the charges which he will be required to meet at the hearing, notice to a renewal applicant that he must testify truthfully and not conceal material information is superfluous. Taking the oath serves the purpose and no unfairness results in holding a renewal applicant to have knowingly assumed the risk of an adverse determination as to its character qualifications when a principal testifies falsely at the hearing. ... [W]e cannot temporize with deliberate deception of the Commission. No matter how unblemished the reputation of the principal in the community, no one is allowed "one bite" at the apple of deceit. (citation omitted). Thus, Center has breached the fundamental requirement that complete candor is demanded of "Commission licensees as to matters under investigation." *Greco, Inc.*, 39 FCC 2d 732, 736-37 (1973), cited with approval by the Commission and the court in *Richardson Broadcast Group*, 7 FCC Rcd 1583, 1585 (1992), *aff'd* by judgement, 995 F.2d 306 (D.C. 1993); *Swan Creek*, 39 F.3d at 1222-1223 (applicant in testimony "acted less than honestly").

The preponderance of record evidence herein clearly supports a conclusion that the Comsat/Lockheed have not been truthful. They have repeatedly violated the ex parte and other rules of the Commission.

The duty of candor requires applicants to be fully forthcoming<sup>15</sup> as to all facts and information that may be decisionally significant to their applications. See *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 and 457 U.S. 1119 (1982). The requirement for absolute truth and candor from those appearing before the Commission is bedrock because the Commission must rely heavily on the

---

<sup>15</sup> Licensees are held to "high standards of punctilio" and must be "scrupulous in providing complete and meaningful information" to the Commission. See *Lorain Journal Co. v. FCC*, 351 F.2d 824, 830 (D.C. Cir. 1965).

completeness and accuracy of the submissions made to it by applicants who, in turn, have an obligation to provide the Commission with the facts needed to carry out its statutory mandate. Intentional deceit with regard to matters of decisional significance may be disqualifying. See *Swan Creek Communications v. FCC*, 39 F.3d at 1222; *RKO General, Inc. v. FCC*, 670 F.2d at 232; *Sea Island Broadcasting Corp. v. FCC*, 627 F.2d 240, 243 (D.C. Cir.), cert. denied, 449 U.S. 834 (1980).

Moreover, the totality of the evidence in this and other current proceedings and the Comsat/Lockheed's deceit must support the conclusion that these licensees lack the requisite character qualifications to deal truthfully with the Commission and to comply with its rules and policies. See 1986 Character Policy Statement, 102 F.C.C. 2d at 1190-91; 1990 Character Policy Statement, 5 FCC Rcd at 3252; *Star Stations of Indiana, Inc.*, 51 F.C.C. 2d 95 (1975), aff'd sub nom. *Star Broadcasting, Inc. v. FCC*, 527 F.2d 853 (D.C. Cir. 1975), cert. denied, 425 U.S. 992 (1976).

#### 6. The Commission Should Impose Stringent Sanctions Against Comsat, Lockheed and its Agents

The Commission has broad discretion in its choice of remedies and sanctions in enforcing licensee violations of its rules and policies. See *RKO General, Inc. v. FCC*, 670 F.2d at 237; *Leflore Broadcasting Co. v. FCC*, 636 F.2d at 463; *Lorain Journal Co. v. FCC*, 351 F.2d at 831.

As previously explained, LRT maintains that the misconduct of Comsat/Lockheed in this case and related proceedings was extremely serious, extending to egregious criminal conduct on the part of Comsat's Florida subsidiary and repeated misrepresentations by Comsat/Lockheed, designed to minimize the effect of the criminal indictment and conviction on their qualifications. Cumulatively, the evidence of misconduct warrants a conclusion that the Comsat/Lockheed lack the requisite character traits of truthfulness and reliability to retain their authorizations.

At the same time, there is no evidence mitigating the impact of misconduct by these two licensees. In fact, to the contrary, the ex parte matters at issue herein reflect

additional aggravated rule violations, which continue to the present. Put as simply as it can be, the misconduct here was not isolated or restricted, but involved the continuing, intentional rule violations on the part of Comsat and Lockheed. It must be concluded that license revocation is appropriate in the circumstances of this case.

Comsat/Lockheed must be sanctioned for their conduct in this proceeding. All of their pleadings should be stricken and the matter referred to the Enforcement Bureau. Furthermore, the attorney in question should be sanctioned. He should also be suspended from practicing before the Commission for an extended period of time, at least 18 months.

Finally, in view of the fact that this latest conduct is not isolated, but is part of a continuing and extensive pattern of rule violations, the Commission should adopt broad sanctions including license revocation.

## 7. Conclusion

## EXHIBIT A

### Email's Sent by LRT to Comsat/Lockheed Counsel

#### 1. Service of Motion to Strike

**To:** amamlet@steptoe.com,david.metzger@intelsat.com,jjtalbott@att.com,  
ljlafaro@att.com,lsecrest@wrf.com,mcrozenblum@att.com,mshenk@steptoe.com,  
rharold@wrf.com,shlyon@verestar.com

**Cc:**

**Subject:** Motion To Strike

**Date:** Sun, 21 Jul 2002 18:48:25 -0500

The attached LRT Motion To Strike Lockheed/Comsat filings was forwarded to the FCC via ECFS on July 21, 2002.

#### 2. Emails Requesting Copies of the Lockheed Letter

---

**Date:** Tue, 02 Jul 2002 12:21:17 -0500

**From:** "litigation recoverytrust" <litigationrecovtrust@email.com>

**Subject:** Comsat/Lockheed

**To:** rharold@wrf.com

Dear Ms. Harold:

We note that Mr. Fagan has apparently filed a letter with the FCC in response to our Supplement. We have not been served with a copy of the Fagan letter.

Would your office please provide us with a service copy of the letter, either via return email or via fax to 212-754-2110.

Thank you.

WL Whitely

--

**To:** rharold@wrf.com

**Cc:**

**Subject:** Fw: Comsat/Lockheed

**Date:** Thu, 04 Jul 2002 12:01:59 -0500

**Ms. Harold:**

**The courtesy of an immediate response is kindly requested.**

**WL Whitely**

Note: forwarded message attached. ----- Original Message ----- From: "litigation recoverytrust" Date: Tue, 02 Jul 2002 12:21:17 -0500 To: rharold@wrf.com Subject: Comsat/Lockheed

--

---

Sign-up for your own FREE Personalized E-mail at [Mail.com](http://Mail.com)  
Save up to \$160 by signing up for [NetZero Platinum Internet service](http://NetZero Platinum Internet service).

---

**Date:** Tue, 02 Jul 2002 12:21:17 -0500  
**From:** "litigation recoverytrust" <litigationrecovtrust@email.com>  
**Subject:** Comsat/Lockheed  
**To:** rharold@wrf.com

Dear Ms. Harold:

We note that Mr. Fagan has apparently filed a letter with the FCC in response to our Supplement. We have not been served with a copy of the Fagan letter.

Would your office please provide us with a service copy of the letter, either via return email or via fax to 212-754-2110.

Thank you.

WL Whitely

---

**To:** rharold@wrf.com  
**Cc:**  
**Subject:** Fw: Comsat/Lockheed  
**Date:** Wed, 03 Jul 2002 11:15:04 -0500

**SECOND REQUEST**

Note: forwarded message attached. ----- Original Message ----- From: "litigation recoverytrust" Date: Tue, 02 Jul 2002 12:21:17 -0500 To: rharold@wrf.com Subject: Comsat/Lockheed

--

---

Sign-up for your own FREE Personalized E-mail at [Mail.com](http://Mail.com)  
Save up to \$160 by signing up for [NetZero Platinum Internet service](http://NetZero Platinum Internet service).

---

**Date:** Tue, 02 Jul 2002 12:21:17 -0500  
**From:** "litigation recoverytrust" <litigationrecovtrust@email.com>  
**Subject:** Comsat/Lockheed  
**To:** rharold@wrf.com

Dear Ms. Harold:

We note that Mr. Fagan has apparently filed a letter with the FCC in response to our Supplement. We have not been served with a copy of the Fagan letter.

Would your office please provide us with a service copy of the letter, either via return email or via fax to 212-754-2110.

Thank you.

WL Whitely

---

**To:** rharold@wrf.com  
**Cc:**  
**Subject:** Fw: Comsat/Lockheed  
**Date:** Thu, 04 Jul 2002 12:01:59 -0500

**Ms. Harold:**  
**The courtesy of an immediate response is kindly requested.**  
**WL Whitely**

---

**To:** rharold@wrf.com  
**Cc:**  
**Subject:** COMSAT  
**Date:** Mon, 08 Jul 2002 18:42:16 -0500

Ms. Harold: This is our fourth communication on this subject. We are still awaiting a service copy of the Fagan letter to the FCC. If we do not receive a copy via return email or fax (212-754-2110), we will move to strike the submission. You should be informed that this is the second time in Comsat - LRT proceedings that documents have not been forwarded to us by the person in question. The first time, the Post Office mistakenly returned a pleading which the lawyer had sent to us and he later filed a statement with the Commission stating that he did not know where to find LRT, not referencing the fact that we had been regularly exchanging pleadings with Comsat at 515 Madison Avenue for five years. Also, the attached press release is for your information. --

**Attachment**

**Litigation Recovery Trust**

# **PRESS RELEASE.....For Immediate Release**

## **FEDERAL COMMUNICATIONS COMMISSION CITES COMSAT FOR FILING FALSE INFORMATION**

---

### **FCC DIRECTS ITS ENFORCEMENT BUREAU TO CONDUCT FURTHER PROBE OF COMSAT'S ACTIVITIES**

---

New York, NY July 8, 2002. The Federal Communications Commission ruled late Friday (July 5) that Comsat Corporation, the country's first satellite company, filed false information in the proceeding involving its merger with Lockheed Martin Corporation (NYSE: LMT). The agency made the ruling based on information submitted by the Litigation Recovery Trust (LRT), a New York based claims organization. The FCC has referred the Comsat violation to its Enforcement Bureau for further action.

In a filing last year to the FCC , LRT submitted evidence that Comsat had falsely stated that Electromagnetic Systems, Inc., its Florida subsidiary, did not hold any licenses issued by the FCC. In response, Comsat admitted that it had filed false information about EMS. In July 2000, EMS executed a criminal plea agreement with the US Department of Justice, admitting to defrauding the Defense Department and obstructing justice. EMS was fined, ordered to repay the stolen monies and placed on probation for five years.

Commenting on the FCC ruling against Comsat, LRT issued the following statement:

“We are gratified that the FCC has cited Comsat for its past illegal conduct. However, we are concerned that the FCC has dismissed, without proper consideration, other documentary evidence which LRT submitted showing that Comsat had sought to conceal the involvement of its former senior management officials in the operations of EMS. We see this as a failure to investigate the evidence of illegal actions of Comsat senior management, not unlike the serious warning signs which were present in the Enron scandal.”

In past filings with the FCC, Comsat specifically denied that any of its senior executives were involved in the EMS company. However, LRT submitted official documents to the FCC (including signed statements by Comsat senior executives) secured in September 2000 from the office of the Florida Secretary of State, Katherine Harris, which established that Comsat's senior executives, including its former president-CEO, general counsel and other officers, were directly involved with EMS, including controlling its board of directors. Although LRT requested the FCC to conduct a full investigation of the company's efforts to conceal the connections between Comsat

senior managers and EMS, the agency so far has chosen to dismiss the evidence submitted by LRT as not relevant.

The LRT statement noted,

“The submission of false information to the FCC and the involvement of its licensees, directly or indirectly, in criminal conduct, can result in the revocation of Commission licenses. The EMS criminal plea came only 10 days prior to the Commission’s vote in favor of Comsat’s \$2.6 billion merger with Lockheed in which senior managers profited. The Commission voted for the merger without knowledge of the criminal conduct of Comsat’s Florida subsidiary or the involvement of Comsat senior management. With this knowledge, it is possible that the merger would have been terminated and the Comsat licenses revoked.”

LRT is also filing a petition asking the FCC to eliminate language in its ruling which accepted Comsat’s allegation that LRT has harassed the corporation in its filings with the FCC. In response LRT has issued the following statement:

“The fact that LRT alone has submitted evidence to the FCC showing that Comsat filed false information with the Commission, leading to a referral to the Enforcement Bureau should be praised not criticized by the agency. Further, over the last six years, LRT has submitted evidence to the FCC showing, among other things, that Comsat for a decade operated a satellite business which transmitted pornographic movies to some 1 million hotel rooms across the US, endangering children and families and violating the public interest; operated a subsidiary that defrauded the US Government and obstructed justice and filed false and incomplete documents to the FCC; and misused and abused its statutory privileges. LRT also has shown that Lockheed has breached its representations to the US Congress and the FCC by moving to liquidate Comsat after it had committed to invest resources to restore the corporation. Rather than being accused of harassment, LRT will seek a proper commendation by the FCC for its continuing work.”

Finally, LRT has renewed its request that the FCC sanction Comsat and Lockheed by ordering that all proceeds being generated by the ongoing liquidation of Comsat assets (estimated at upwards of \$3 billion) be turned over to the FCC to help fund the digital conversion of small market, minority owned and public television stations and cable systems. The turn over of funds would also constitute a partial payback of the over \$20 billion in revenues which Comsat received from its monopoly over satellite circuits between 1964 and 1998. The FCC is fully authorized to order such a divestiture of funds.

For more information contact Bill Hallenbeck at 212-752-5566 or [litigationrecovtrust@email.com](mailto:litigationrecovtrust@email.com).

---

To: rharold@wrf.com  
Cc:  
Subject: Comsat/Lockheed  
Date: Tue, 09 Jul 2002 18:56:15 -0500

Having not received service of the Fagan letter, we will move forward with a Motion to Strike. We had hoped to avoid this for all concerned. Attached is forwarded fyi.

**ATTACHMENT**

**Litigation Recovery Trust**

**PRESS RELEASE.....For Immediate Release**

**LITIGATION RECOVERY TRUST CITES INFORMATION SHOWING FORMER  
COMSAT SENIOR OFFICIALS CONTROLLED THE COMPANY'S FLORIDA  
SUBSIDIARY CONTRARY TO BOGUS FILINGS WITH FCC**

**FEDERAL COMMUNICATIONS COMMISSION HAS SO FAR DETERMINED  
INFORMATION SUBMITTED BY LRT IS NOT RELEVANT TO ITS INQUIRY INTO  
PAST COMSAT OPERATIONS**

New York, NY July 8, 2002. In answer to press inquiries, the Litigation Recovery Trust (LRT), a New York based claims organization, is providing cites to public record information it has submitted to the Federal Communications Commission showing that senior officials of Comsat Corporation controlled Electromagnetic Systems, Inc. (EMS), its former Florida subsidiary. Comsat had filed statements with the FCC denying that its senior executives exercised control over EMS. (Note: On July 17, 2000, EMS, while a Comsat subsidiary, executed a criminal plea agreement with the US Department of Justice, admitting to defrauding the Defense Department and obstructing justice. EMS was fined, ordered to repay the stolen monies and placed on probation for five years.)

The FCC ruled late Friday (July 5) that Comsat, the country's first satellite company, filed false information concerning the license held by EMS. The agency made the ruling based on information submitted by LRT. The FCC has referred the Comsat violation to its Enforcement Bureau for further action.

In the same filing with the Commission, Comsat stated that its senior officials did not exercise control over EMS. In response to Comsat, LRT submitted public documents secured in September 2000 from the office of the Florida Secretary of State, Katherine Harris. The documents, which contained signatures of Comsat senior executives including its president-CEO, general counsel and other officials, established that the officers controlled the EMS board and exercised voting control over the subsidiary. Comsat to date has failed to respond in any way to the LRT evidence. In its July 5 ruling, the FCC dismissed the LRT filing, finding that the EMS documents are not relevant to its review of Comsat's past actions.

The documents submitted by LRT include copies of the EMS filings with the State of Florida (PCAR reports) for the years 1996 through 2000, which reflect that Comsat executives served in key officer positions at EMS throughout these years and held sufficient directorships to control all board actions. The documents filed by LRT with the Commission include the following:

- Exhibit 2 1996 Profit Corporation Annual Report (Document # 465846)
- Exhibit 4 1997 Profit Corporation Annual Report (Document # 465846)
- Exhibit 5 1998 Profit Corporation Annual Report (Document # 465846)
- Exhibit 6 1999 Profit Corporation Annual Report (Document # 465846)
- Exhibit 7 2000 Uniform Business Report (UBR) (Document # 465846)
- Exhibit 8 Articles of Amendment of Certificate of Incorporation (October 28, 1998) and filing receipt and notice to correct filing
- Exhibit 9 Articles of Amendment of Certificate of Incorporation (December 28, 1998) and filing receipt
- Exhibit 10 Action of Board of Directors in Lieu of Meeting (undated, presumed to be December 15, 1998 )
- Exhibit 11 Consent of Stockholder in Lieu of Meeting (December 15, 1998).

LRT has requested that the Commission conduct a full investigation and/or evidentiary hearing into the facts and circumstances related to Comsat's operation and control of EMS, as part of its review of the Comsat-Lockheed merger.

Commenting on the FCC's failure to date to investigate the evidence involving Comsat senior executives, LRT issued the following statement:

"We remain most concerned that the FCC has dismissed, without proper consideration, the public record documentary evidence which LRT submitted, showing that Comsat has sought to conceal the involvement of its former senior management officials in the operations of EMS. We see this as a blatant failure to investigate the evidence of illegal actions of Comsat senior management, not unlike the serious warning signs, which on investigation were found present in

the Enron scandal. Comsat's unsupported explanation that its officials were not involved with EMS is a dog that just won't hunt.<sup>16</sup>

LRT also commented on the source of the public record evidence, which it accessed to expose Comsat's false statements.

"LRT located evidence proving the involvement of Comsat's former senior managers in EMS operations by accessing official company filings posted on the Internet site of the Florida Secretary of State. LRT has found that the State of Florida, under the administration of Governor Jeb Bush, has established the most comprehensive public record system for researching and tracing the operations of corporate officers and boards. Without the Florida Secretary of State's public records, LRT would not have been able to locate necessary evidence showing that Comsat had filed false information with the FCC concerning the ownership and control of EMS.

LRT notes that President George W. Bush's today announced a campaign to "end the days of cooking the books, shading the truth and breaking our laws." It is interesting to note that the administration of Jeb Bush has developed what is likely the most effective and efficient corporate record system to aid this needed effort to police corporate governance violations and other illegal activities. "

Finally, in light of the past violations of Comsat, LRT has confirmed that it has renewed its request that the FCC sanction Comsat and its parent, Lockheed Martin Corporation (NYSE: LMT), by ordering that all proceeds being generated by the ongoing liquidation of Comsat assets (estimated at upwards of \$3 billion) be turned over to the FCC to help fund the digital conversion of small market, minority owned and public television stations and cable systems. The turn over of these proceeds would also constitute a partial payback of the over \$20 billion in revenues which Comsat received from its monopoly over the sale of satellite circuits between 1964 and 1998. Under the Communications Satellite Act of 1962, as amended, the FCC is fully authorized to order such a divestiture of funds.

For more information contact Bill Hallenbeck at 212-752-5566 or [litigationrecovtrust@email.com](mailto:litigationrecovtrust@email.com).

---

<sup>16</sup>LRT's use of the underscored Southern colloquial expression derives from the FCC's use in its ruling of the derisive word "confederate" in referring to its members. LRT regards the use of the word "confederate" as insulting and highly prejudicial. LRT is demanding a retraction and apology from the Commission. Rather than being castigated by the Commission, LRT should be praised for its continuing efforts to expose corporate malfeasance, misfeasance and out illegality.

Violations of the ex parte rules may result in a person's disqualification from participating in a proceeding, or in other sanctions, such as a forfeiture. See 47 C. F. R. § 1.1216.

Responsibility for a violation of the ex parte rules extends to a party that "solicit[s] or encourage[s] others to make any improper presentation," *id.* at s 1.1210, *Freeman Eng'g Assocs. v. FCC*, 103 F.3d 169, 184 (D.C. Cir. 1997) (listing factors that inform the analysis whether a proceeding is "irrevocably tainted" by ex parte contacts and therefore void).